



2026:CGHC:13568



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 180 of 2025

1 - Abhishek Dulani @ Raja Dulani S/o Late Shri Banshilal Dulani Aged About 40 Years Proprietor Of M/s Ambika Lorry Arranger, Village- Tarenga, Parshu Ram Ward, Bhatapara, District- Balodabazar- Bhatapara (C.G.). (Execution Wrongly Filed, Through-- Proprietor/ Partner And Authorized Signatory, Abhishek Dulani @ Raja Dulani S/o Late Shri Banshilal Dulani Aged About 40 Years, R/o Near Naka No. 1, Village- Tarenga Road, Parshuram Ward, Bhatapara, District- Balodabazar- Bhatapara (C.G.).

... Petitioner(s)

versus

1 - The New India Assurance Company Limited Through- Branch Manager, Branch Office Shanti Kunj, Civil Lines Balodabazar, District- Balodabazar- Bhatapara (C.G.).

2 - M/s Vinayak Industries Through- Proprietor, Village Khokhali Road Bhatapara, District- Balodabazar- Bhatapara (C.G.).

... Respondent(s)

(Cause title is taken from the CIS)

For Petitioner	: Shri Priyank Rathi, and Shri Kamlesh Patel, Advocates
For Respondent-1	: Shri BN Nande, Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal

Order on Board

20.03.2026

1. Heard.

2. Present petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 03.02.2025, passed by the learned Additional District Judge, Bhatapara in Execution Case-05 of 2013, whereby the learned trial Court, in execution of judgment and



decree dated 27.09.2018, passed in Civil Suit-05B of 2013, warrant for attachment of movable properties of the judgment debtor has been issued.

3. Learned counsel for the petitioner would submit that the respondents prosecuted a Civil Suit-05B of 2013 before the learned trial Court for recovery of Rs.1,18,797/-, with respect to their business transaction. The said Civil Suit was decreed in favour of the plaintiffs/respondents vide judgment and decree dated 27.09.2018. In the Civil Suit, the dispute between the plaintiffs and the defendant – firm, M/s Ambika Road Lines and father of the petitioner was the proprietor of the said firm. It was a proprietorship concern. During pendency of the suit, father of the petitioner namely, Banshilal has died and the said proprietorship of the firm was dissolved. Though he has not inherited the property of the firm, yet, the petitioner was substituted in place of Banshilal Dulani as proprietor of the firm before the learned trial Court. He would also submit that while passing the judgment and decree, learned trial Court has specifically ordered that the amount of Rs.1,18,797/- is recoverable from the properties of the firm, or the properties of its proprietor Banshilal Dulani, and it is specifically observed in para-21 of the judgment that the amount is not recoverable from the present petitioner-Abhishek Dulani @ Raja Dulani. He would further submit that the respondents have filed an execution application in which the petitioner is shown as proprietor of the firm. After service of notice, petitioner appears in the execution proceeding and raised an objection on



28.08.2023 (Annexure P7) that after death of his father Banshilal Dulani, firm was dissolved, and he has not inherited the property of the firm. Therefore, execution application filed against him is not maintainable.

He would also submit that the objection raised by the petitioner before the learned executing Court has not been decided and on 10.06.2024, the judgment debtor was directed to pay the decreed amount to the decree holder, and subsequently, the attachment warrant of movable property of the judgment debtor was issued. He would also submit that on 03.02.2025, attachment warrant was issued after observing that in the array of impugned judgment and decree, petitioner has been shown as the proprietor/partner of the firm, and therefore, movable property of the petitioner may be attached, whereas, in the impugned judgment and decree, petitioner was exonerated from his liability. He would also submit that without considering the objection raised by the petitioner, attachment warrant were has been issued against him, and therefore, the impugned order is liable to the set aside.

4. On the other hand, learned counsel appearing for the respondents vehemently opposes the submissions made by learned counsel for the petitioner, and would submit that during pendency of the suit, father of the petitioner-Banshilal Dulani died, and in his place, petitioner has been substituted as legal representative of the deceased-Banshilal Dulani. Though the decree has been passed against the firm but it being the proprietorship concern, represented by the present petitioner, the decree



has to be executed as per its direction. Respondents are not executing the decree with respect to the personal property of the petitioner, but they are executing the decree with respect to the property of the firm, for which they also annexed the list of movable properties, which is liable to be attached in execution of the decree. He would also submit that while passing order dated 10.06.2024, though the objection of the petitioner appears to be not considered by the learned executing Court but learned executing Court after considering the objection raised by the petitioner, passed its order dated 10.06.2024. Petitioner is only under apprehension/misconception that his property may be attached, hence, his petition is liable to be dismissed.

5. Heard learned learned counsel for the petitioner, and perused the material annexed with the writ petition.

6. From perusal of the judgment and decree dated 27.09.2018, it transpires that there is an observation of the learned trial court in its judgment that petitioner was exonerated from payment of any amount against the claim raised by the respondents towards liability of his father-late Banshilal Dulani, and specifically decreed for recovery of amount of Rs.1,18,797/- from property of the firm, or/and the property of his father-late Banshilal Dulani. In execution application, respondents have made the present petitioner as proprietor/partner of the firm, i.e. M/s Ambika Road Lines, in which he raised objection in his reply/application dated 28.08.2023, filed before the learned executing Court, which is annexed in



the present writ petition as Annexure P7. From perusal of objection raised by the petitioner filed before the learned executing Court, it further transpires that he raised objection regarding maintainability of execution proceeding as he himself has been exonerated by the learned trial Court from payment of amount on behalf of the firm.

7. From perusal of order-sheets filed by the petitioner in the present writ petition Annexure P-2, it further transpires that the objection raised by the petitioner before the learned executing Court regarding maintainability of execution application has not been decided till date. Yet, the attachment warrant was issued against the said firm through its proprietor/partner-Abhishek Dulani @ Raja Dulani, present petitioner. When present petitioner was exonerated from his liability by its judgment and decree passed by the learned trial court, objection raised by him in execution proceeding that the same is not maintainable when it was being prosecuted by the petitioner, then the learned execution Court is required to decide the objection raised by the petitioner. His claim is that he has not inherited the property of the firm, and also the respondents claimed that they are only executing the property belongs to the firm.

8. Be that as it may, without going through the merits of the case, this Court is of the opinion that the matter should be remitted back to the learned execution Court to take a decision on the reply/objection filed by the petitioner filed on 28.08.2023 with respect to maintainability of execution proceeding, and liability of the petitioner, and the list of



movable property in which the respondents annexed along with their execution application, and claimed for attachment, whether it belongs to the petitioner, or to the firm and then only, they would proceed if it is found that the execution application is maintainable, or the property is shown in the list is liable to be attached.

9. Consequently, the impugned order dated 03.02.2025 (Annexure P-1) is set aside. Learned execution Court is directed to decide the reply/objection raised by the petitioner on 28.08.2023 in accordance with law, after providing opportunity of hearing to the parties concerned, and then to proceed further, if they found that the execution application is maintainable.

10. With the aforesaid objection, petition stands **allowed**.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE